IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 125 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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XYLON ELECTRO TECHNIC PRIVATE LIMITED - Applicant(s)

Versus

. - Respondent(s)

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Appearance :
MRS SWATI SOPARKAR for Applicant(s) : 1,
None for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 16/03/2007

ORAL JUDGMENT

Present Judges' Summons has been taken out by the applicant – XYLON ELECTRO TECHNIC PRIVATE LIMITED (Transferee Company) for appropriate direction to dispense with separate proceedings as required under Section 391(2) of the Companies Act, 1956 by submitting that the applicant – Company being the Holding Transferee Company in the proposed amalgamation of V Lux Private Ltd (the transferor company), a wholly owned subsidiary of the Company with the Transferee Company, a separate proceedings as required to be taken out under the provisions of Section 391(2) of the Companies Act, 1956 are not required to be undertaken by the applicant – Company.

2. It is submitted in affidavit in support of the Summons that Transferee Company in the proposed scheme of amalgamation being the holding Company of the Transferor Company, the entire share capital of the Transferor Company is held by the Transferee Company and its nominees. It is further submitted that clause 10 of the Scheme stipulates that the equity shares of the Transferor Company which are held by the Transferee Company and / or its nominees shall stand automatically cancelled and in lieu thereof, no allotment of any shares shall be made by the Transferee Company. Considering the said scheme it is submitted that capital structure of the Transferee Company is not likely to undergo any change and the rights of the existing shareholders of the Transferee Company are not effected in any manner. Ms. Soparkar, learned Advocate appearing on behalf of the applicant has relied upon the order passed by this Court dated 04.12.2006 passed in Company Application No. 619 of 2006 as well as following decisions reported in Companies Cases :

1. 48 Co. Cases 23 (Del.) Sharat Hardware Industries Private Limited.

2. 105 Co.Cases 16(Bom.) Mahaamba Investments Limited v. IDI Limited.

3. 1977 Tax Law Reporter 1805 (Del.) Choudhari Metal Industries Private Limited.

and followed by our High Court in number of Company Applications, namely;

1. Co.Appln. No. 43 of 2004 dated 19.2.2004.

2. Co.Appln. No. 139 of 2004 dt. 27.4.2004, Transpek Marketing Limited.

3. Co.Applns. No. 85, 86, 87 of 2005 dt.7-3-2005, Bazley Finvest Pv.Ltd. And others.

4. Co.Appln. No. 176 of 2005 dt. 11-5-2005, Arvind Clothing Limited.

5. Co.Appln. No. 411 of 2005 dt. 16.12.2005, Dinesh Platechem Limited,

3. Therefore, it is submitted that it is not necessary for the Holding Company to take out separate proceedings for amalgamation of wholly owned subsidiary.

4. Heard the learned advocate appearing on behalf of the applicant.

5. Having gone through the aforesaid decisions as well as the order

passed by this Court in Company Application No. 619 of 2006 as well as the Scheme of Amalgamation, and in light of various judgments referred to hereinabove, holding that separate proceedings are not necessary for the Transferee Company being the Holding Company, it is held in the present case also that separate proceedings, as required to be taken out under the provisions of Section 391(2) of the Companies Act, 1956, are not required to be undertaken by the applicant Company. This application is accordingly allowed to the aforesaid extent. No costs.

(M.R. SHAH, J.)

shekhar